

Message Text

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ACTION ARA-20

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E.O. 11652: N/A

TAGS: PFOR: OCON, BR

SUBJ: IAJC SESSIONS

FROM BARNES

1. TOPIC FOREIGN INVESTMENT AND MULTINATIONAL CORPORATIONS REFERRED TO WORKING GROUP WHICH DRAFTED DETAILED AGENDA FOR 1974-1974 INCLUDING PROPOSED INTER-AMERICAN CORPORATION DESCRIBED HEREIN. INITIATIVE TAKEN BY BARNES AS RAPPORTEUR REVIEWING LAST SEVEN YEARS DISCUSSION OF INVESTMENT LEGAL PROBLEMS AND DEPLORING LACK OF ANY RECOMMENDATION. FACT OF FAILURE OF PRIOR EFFORTS AND CONTINUOUS REFERENCE NEED FOR INTERNATIONAL MEASURES LED MAJORITY TO FAVOR FULL STUDY AND THEREFORE INDIRECTLY APPROVE BARNES PROPOSAL. FINAL OUTLINE REFLECTS LATIN AMERICAN PREOCCUPATION WITH CONCEPTUALIZING BUT INCLUDES SPECIFIC REFERENCE BARNES IDEA OF INTERAMERICAN CORPORATION.

2. RELEVANT TEXT OF BARNES DRAFT FOLLOWS: BEGIN QUOTE
"THE AMERICAN STATES SHOULD MOVE TOWARD A MULTINATIONAL MECHANISM FOR THE INCORPORATION OF AN 'INTER AMERICAN
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COMPANY' SIMILAR TO THE DRAFT STATUTE FOR A EUROPEAN COMPANY.

SUCH A REGIONAL LAW SHOULD PROVIDE FOR THE
FOLLOWING MACHINERY:

A) CREATION OF A LEGAL ENTITY WITHIN THE INTER
AMERICAN SYSTEM OPERATING UNDER AN INTER AMERICAN COM-
PANY LAW.

B) PROVISION FOR INSURANCE FUND CONSISTING OF PRE-
MIUMS PAID BY PRIVATE COMPANIES AND GUARANTIES BY
SIGNATORY STATES THAT WOULD COVER SPECIFIC RISKS NOW
COVERED BY THE INVESTMENT GUARANTY PROGRAMS OF CAPITAL-
EXPORTING COUNTRIES SUCH AS UNITED STATES, JAPAN AND
WEST GERMANY.

C) A FORUM FOR THE SETTLEMENT OF DISPUTES OR CLAIMS
WHICH A STATE MIGHT HAVE AGAINST AN INTERAMERICAN
COMPANY OR WHICH AN INTER AMERICAN COMPANY MIGHT HAVE
AGAINST A SIGNATORY STATE, WITH POWER TO DETERMINE THE
AMOUNT OF DAMAGES AND TO DRAW ON THE INSURANCE FUND FOR
PAYMENT OF THE ADJUDICATED SUM.

D) RECOGNITION OF THE CONTINUING SOVEREIGNTY OF EACH
STATE OVER ACTIVITIES CARRIED OUT THEREIN BY AN INTER
AMERICAN COMPANY, INCLUDING BUT NOT LIMITED TO TAXATION
OF PROJECTS ARISING WITHIN ITS JURISDICTIONS, REGULATION
OF PURCHASE OF SHARES, LOCAL BORROWING, ANTI-MONOPOLY
LEGISLATION, KEY SECTOR EXCLUSIONS AND THE LIKE.

THE PRINCIPAL EFFECT OF THE AGREEMENT TO ESTABLISH
AN INTER AMERICAN COMPANY LAW WOULD BE TO HARMONIZE THE
TREATMENT OF FOREIGN INVESTORS BY REQUIRING THAT THEY
INCORPORATE MULTILATERALLY WHENEVER THEY PLANNED TO
OPERATE WITHIN MORE THAN ONE COUNTRY WITHIN THE SYSTEM.
THE PRESENT SYSTEM OF INVESTMENT INSURANCE WOULD BE
SUPPLANTED BY A MULTILATERAL FUND AND THERE WOULD BE A
TRIBUNAL ESTABLISHED TO SETTLE CLAIMS ARISING UNDER THE
INSURANCE SCHEME.

THE RECENT STUDY PREPARED BY THE OAS FOR THE
SPECIALIZED CONFERENCE ON PRIVATE INTERNATIONAL LAW
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OEA/SER.K/XXI.1 CIDIP/2 10 AGOSTO 1973 IS A VALUABLE
SOURCE OF INFORMATION ON THE LIMITATIONS OF UNILATERAL
ACTION AND THE NEED FOR REGIONAL CONTROLS (PAGES 40-56
OF THE ABOVE STUDY). AFTER A CAREFUL ANALYSIS OF THE
ADVANTAGES AND DISADVANTAGES OF THE VARIOUS PROPOSALS
WHICH HAVE BEEN PUT FORWARD FOR THE REGULATION OF MULTI-
NATIONAL CORPORATIONS AND THEIR FOREIGN INVESTMENTS, THE
CJI SHOULD ADOPT THE FOLLOWING CONCLUSIONS TO BE PRE-

SENTED FOR CONSIDERATION BY THE GOVERNMENTS AS A MEANS
OF SOLVING THE PROBLEM.

- THAT BILATERAL TREATIES ARE INCREASINGLY INADEQUATE
TO SOLVE INTERNATIONAL CONFLICTS INVOLVING DISPUTES
OVER TRADE AND INVESTMENT WITHIN THE WESTERN HEMISPHERE.

- THAT THE PRESENT SYSTEM OF INTERNATIONAL DISPUTE
SETTLEMENT BETWEEN STATES HAS NOT PROVIDED ADEQUATE
SOLUTIONS TO TRADE AND INVESTMENT PROBLEMS.

- THAT THE RULES OF PRIVATE INTERNATIONAL LAW CON-
CERNING THE LEGAL REGIME OF TRANSNATIONAL ENTERPRISES ARE
NOT SUFFICIENT TO INSURE EFFECTIVE JUSTICE FOR THE
PARTIES INVOLVED.

- AND THAT THEREFORE THE MEMBER GOVERNMENTS OF THE
OAS SHOULD ASK THE CJI TO DRAFT AN INTER AMERICAN AGREE-
MENT ON TRADE AND INVESTMENT TAKING INTO ACCOUNT THE
DESIRABILITY OF A MULTILATERAL INSURANCE FUND FOR INTER
AMERICAN COMPANIES ORGANIZED UNDER A REGIONAL STATUTE
ADMINISTERED BY A REGIONAL AGENCY AND ADJUDICATED BY A
TRIBUNAL EMPOWERED TO GRANT RELIEF TO AGGRIEVED PARTIES."
END QUOTE.

3. ACTION ON FINAL IAJC OUTLINE WILL BE COMPLETED THIS
WEEK.

BOONSTRA

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